



STATE OF INDIANA

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May 18, 2015

Mr. David Garrett
10430 Driver Drive
Evansville, IN 47725

Re: Formal Complaint 15-FC-128; Alleged Violation of the Access to Public Records Act by the City of Evansville; Mr. Dirck Stahl, Esq.; Ms. Jean Carlson

Dear Mr. Garrett,

This advisory opinion is in response to your formal complaint alleging the City of Evansville ("City"), Mr. Dirck Stahl, Esq., and Ms. Jean Carlson violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et. seq.* On April 10, 2015, the City responded to your complaint via counsel, Mr. Dirck Stahl, Esq. His response is enclosed for your review. Pursuant to Ind. Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on April 10, 2015.

BACKGROUND

Your complaint dated April 10, 2015 alleges the City of Evansville violated the Access to Public Records Act by failing to provide the requested documents.

On April 24, 2014, you made an APRA request to the City seeking documents showing all transactions associated with a syndicated loan used to provide interim financing to the Downtown Arena. To date, your request has not been fulfilled.

The City correctly notes your request is untimely; however, this has been an unusual case of an ongoing request. This Office has been aware of the request since its inception and considers it timely for the purposes of this Opinion.

The City appears to contend the records you requested were misplaced by the prior administration. If this is true, it is consistent with the City's claims it does not have the records you requested.

Counsel believes the City has provided records which satisfy your request. Additionally, counsel contends the City attempted to provide its own accounting records of the funds requested, to satisfy your request.

Finally, counsel notes the City attempted to provide you with authorization to retrieve the accounting records from Fifth Third Bank, which was not accepted.

ANALYSIS

The public policy of the APRA states that “(p)roviding persons with information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information.” See Ind. Code § 5-14-3-1. The City of Evansville is a public agency for the purposes of the APRA. See Ind. Code § 5-14-3-2(n)(1). Accordingly, any person has the right to inspect and copy the City’s public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. See Ind. Code § 5-14- 3-3(a).

As stated above, this Office is familiar with this ongoing dispute. *Opinion of the Public Access Counselor 14-FC-171* is incorporated by reference. The City has gone to considerable length explaining any perceived lack of access. Please be advised, however, a Trier of fact would be the ultimate authority to determine whether those explanations are sufficient. Similarly, this Office does not have the enforcement authority to compel the City to take any particular action – I can only advise, opine and counsel.

I do not find it constructive to find a violation on the part of a public agency simply for the sake of doing so. If information exists at the City’s disposal which could satisfy your request which has not been released, then a violation has occurred. But if the City has exhausted every effort in order to produce documents to you, then there is simply no other administrative remedy I am able to provide.

That being said, if they have not already done so, I once again encourage the City to attempt to be proactive in doing their due diligence in finally satisfying your public records request, if possible. Any other remedy or grievance you have from this point would need to be sought with another authority.

Regards,

A handwritten signature in black ink, appearing to be 'LHB', with a long, sweeping underline that extends to the left and then curves back under the signature.

Luke H. Britt
Public Access Counselor

Cc: Mr. Dirck H. Stahl, Esq.